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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of Cable Act Reform Provisions
of the Telecommunications Act of 1996

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CS Docket No. 96-85

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COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments to the Order and Notice of Proposed Rulemaking ("NPRM") released on April 9, 1996, in the proceeding captioned above. This proceeding has the purpose of implementing the provisions of the Telecommunications Act of 1996¹ which reform Commission rules relating to cable television. NTCA comments specifically on Section III(C) of the NPRM which requests comments on the definition of small cable operators. NTCA members providing cable will benefit from the further deregulation provided for in the NPRM.

NTCA is a national association of approximately 500 small local exchange carriers ("LECs") providing telecommunications services to interexchange carriers and subscribers throughout rural America.

Approximately 180 NTCA members operate small cable television services in their telephone service areas. Formerly, most of them provided service under the rural exemption in 47 C.F.R. § 63.58. These systems were initially established by the telephone companies at the request of customers or franchising authorities because service to these sparsely populated areas could not be obtained from large multiple system operators. Most of these companies serve sparsely

¹ Pub. L. No. 104-104.

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populated area and have fewer than 1,000 customers. Their cable operations are typically run by small staffs. Additionally, costs for these companies are generally higher in these areas because they do not possess the economies of scale present in more densely populated areas.

DISCUSSION

At the outset, NTCA urges the Commission to effectuate the true intent of Congress which was to deregulate cable systems whenever possible. Its first “message” of restrained regulation was in the Cable Television Consumer Protection and Competition Act of 1992 (“Cable Act”), directing the Commission to be guided by Congress’ intent to “rely on the marketplace, to the maximum extent feasible. . . .”² The effect of overburdensome regulations on small companies was of particular concern in the Cable Act. Hence, Congress directed the Commission to reduce regulatory burdens and the cost of compliance for small systems. This led the Commission to implement certain relaxed small system rules identifying systems serving 15,000 or fewer subscribers as those systems eligible for special rate and administrative treatment.³ Congress’ most recent directive regarding small cable operators in the Telecommunications Act of 1996 continues in this vein and will enable qualifying small cable operators to become completely deregulated on the cable programming service tier.⁴ Thus, as

² Cable Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, § 2(b)(2) (1992).

³ *Sixth Report and Order and Eleventh Order on Reconsideration* in MM Docket Nos. 92-266 & 93-215, FCC 95-196, 10 FCC Rcd 7393 (1995) (“Small System Order”).

⁴ Specifically small cable operators are exempted from the subsection (a), (b), and (c) rate regulation provisions of Section 623 with respect to “cable programming services, or a basic service tier that was the only service tier subject to regulation as of December 31, 1994, in any franchise area in which that operator services 50,000 or fewer subscribers.” 1996 Act, 301(c), *to be codified at* 47 U.S.C. § 623(m)(1).

Congress has repeatedly expressed the intent to free small cable operators from regulatory burdens, the Commission should fashion its rules to implement that directive expeditiously.

NTCA agrees with the Commission that the 1996 Act appears to have meant deregulation for small cable operators under Section 301 (c) to be determined on a franchise-area by franchise-area basis.⁵ This implies that even if a small operator serves more than 50,000 subscribers spread over multiple franchise areas, it can still qualify for an exemption for the entire system as long as each separate franchise area meets or falls beneath the 50,000 mark. We agree with the Commission's tentative conclusion that system size in the aggregate is irrelevant for meeting the 50,000 subscriber threshold in Section 301 (c).

When commenting to the Commission on its proposed "small system rules," NTCA had suggested that the service area of a small system be based on the number of subscribers in a franchise area as opposed to the number of subscribers served by the system's principal headend. Conversely, the Commission decided to define a small system based on the number of subscribers served from its principle headend.⁶ NTCA argued for the "franchise area" approach because systems often operate over several franchise areas. Rate regulation procedures can differ in each franchise area making the treatment of a cable system spread out in several jurisdictions inconsistent from franchise area to franchise area. This is burdensome not only for the "small system" but for the franchise authorities as well.⁷

⁵ See NPRM ¶ 87.

⁶ Small System Order, *supra* note 3, ¶ 35.

⁷ Comments of NTCA, *In re* Implementation of Sections of the Cable Television Consumer Protection Act of 1992, MM Docket 93-215, at 4 (Aug 25, 1993).

NTCA makes this point because the NPRM states that small system rules will be unaffected by this proceeding.⁸ Some systems still in the fewer than 15,000 subscriber category will qualify for total deregulation of basic service tier as well as cable programming services under Section 301(c) making the small system rules inapplicable. However, systems will remain that are regulated on the basic service tier ("BST") because they operated more than one service tier as of December 31, 1994. Of these systems, ones serving fewer than 15,000 subscribers will be regulated on their BST but still qualify for the relaxed small system rules.⁹ The small system rules for these systems mark the service area of a system at its headend. NTCA believes the rules are incongruous with the franchise area threshold proposed in the NPRM. The small system rules and the small cable operator statutory provisions have the same purpose of alleviating administrative burdens for small cable companies. Thus, NTCA urges the Commission to conform the small system rule subscriber threshold so that the 15,000 limit is also based on franchise area. This will permit small companies that must apply both the 1996 Act and the small system rules to their cable operations to rely on a consistent standard.

The Commission also tentatively concludes that the "scope of deregulation depends solely upon the number of tiers that were subject to regulation as of December 31, 1994." We agree because this interpretation is consistent with the overall reform of the Telecommunications Act of 1996 which deregulates all cable programming services after March 31, 1999. In view of the short time frame to complete deregulation of cable programming services, there is little purpose in

⁸ NPRM ¶ 32.

⁹ Under the small system rules, the system qualifies as long as it is owned by an operator that serves no more than 400,000 subscribers over all of its systems ("a small cable company"). See Cable Television Service, 47 C.F.R. 76.901 (1995).

regulating one tier systems at this time. The administrative complication of changing from regulation to deregulation will be avoided by the interpretation the Commission proposes. The plain language of the statute supports the interpretation that a system with a BST that was the only service tier subject to regulation as of December 31, 1994 is now deregulated. Under that interpretation, even though a system may now have a cable programming service tier ("CPST"), if it was only regulated on the BST as of December 31, 1994, it will be exempt from rate regulation on both tiers pursuant to the 1996 Act. Likewise, the system would be deregulated only on its CPST(s) if it had more than one tier subject to regulation as of December 31, 1994.

CONCLUSION

For the above stated reasons, NTCA recommends that the Commission adopt rules establishing the 50,000 threshold on a franchise area basis and conform its small system rules threshold to a franchise area basis.

Respectfully submitted,

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May 28, 1996

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CS Docket No. 96-85 was served on this 28th day of May 1996, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:


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